

## The Tax Articles of the Maryland Declaration of Rights

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## THE TAX ARTICLES OF THE MARYLAND DECLARATION OF RIGHTS

By H. H. WALKER LEWIS\*

Although the Maryland Declaration of Rights has had a declining significance in the decision of tax cases, it is still basic to our governmental structure and has much current as well as historical interest.

The Declaration of Rights is a statement of principles. Unfortunately, many of them show the wear of time. The tax articles, especially, have undergone erosion through the impact of changed conditions and the human tendency to be guided by expediency when dealing with the harsh realities of revenue requirements.

### BACKGROUND OF DECLARATION OF RIGHTS

Our War of Independence was not merely a struggle against British domination; it was a social revolution as well. It came during a period of ferment, when thinking people were reexamining the principles of government and when political and economic theories were undergoing drastic change. It was more than coincidence that Adam Smith's "Wealth of Nations" should have been published in the same year as the Declaration of Independence, and that this same period should have ushered in the first practical adaptation of the steam engine to industrial use.

The Maryland Declaration of Rights of 1776 was only one of many bills of rights in this country.<sup>1</sup> All had the

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<sup>1</sup> See WILLIAM C. WEBSTER, *COMPARATIVE STUDY OF THE STATE CONSTITUTIONS OF THE AMERICAN REVOLUTION*, Publication No. 200 of the Amer. Acad. of Pol. and Social Science (Phila., 1897); and LEILA R. CUSTARD, *BILLS OF RIGHTS IN AMERICAN HISTORY*, No. 24 of the Social Science Series published by the Univ. of Southern California Press (Los Angeles, 1942). The latter paper lists 46 different bills of rights and points out that "no taxation without representation" formed the central theme of 26 of them.

same fundamental purpose; all were links in the documentary chain of human liberties running back through the British Bill of Rights and the Petition of Right to Magna Charta.

Prior to 1776, the most important of the American bills of rights was that adopted by the Stamp Act Congress of 1765, which enunciated the cardinal doctrine of the Revolution, that the colonists were entitled to the common law rights of Englishmen. Article III of this Declaration was the forerunner of Art. 14 of the Maryland Declaration of Rights. It stated:

"That it is inseparably essential to the Freedom of a People, and the undoubted right of Englishmen, that no taxes be imposed on them, but with their own Consent, given personally, or by their Representatives."

The Maryland Declaration of Rights and Constitution of 1776 were drafted and adopted by a Convention composed of delegates elected throughout the State on August 1, 1776. Neither document was submitted to the vote of the people, but drafts were printed and distributed so that the delegates could better ascertain the sentiments of their constituents. The actual preparation of the Declaration of Rights was in the hands of a committee consisting initially of Samuel Chase, Charles Carroll, Barrister, Charles Carroll of Carrollton, Robert Goldsborough, William Paca, George Plater and Matthew Tilghman;<sup>2</sup> the draftsmanship has been attributed primarily to Charles Carroll, Barrister.<sup>3</sup> Both the Declaration of Rights and the Constitution proper were adopted by the Convention on November 3, 1776.

Although British taxes formed the chief stimulant to colonial unrest, they were not the only exactions that were regarded by the Convention as oppressive. Lawyers will be interested to note that while the Declaration of Rights

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<sup>2</sup> Charles Carroll, Barrister and Samuel Chase resigned after the Declaration of Rights had been drafted and were replaced by Thomas Johnson and Robert T. Hooe. The resolutions and proceedings of the Constitutional Convention of 1776 are set out in Hanson and Chase, *Laws of Maryland, 1765-1784*.

<sup>3</sup> See KATE MASON ROWLAND'S *LIFE OF CHARLES CARROLL OF CARROLLTON* (1898), at p. 190.

was under consideration by the Convention, Mr. Williams, of Frederick County, moved the adoption of an article referring to the oppressiveness of legal fees and prohibiting charges by practitioners of the law except as fixed by act of the legislature. The Convention, composed largely of lawyers, voted down the proposal 46 to 6.

### TAX ARTICLES

The Maryland Declaration of Rights contains two articles dealing expressly with taxation,<sup>4</sup> now numbered as follows:

Art. 14, prohibiting the imposition of taxes without the consent of the Legislature;

Art. 15, providing for the uniformity of taxes and for other matters.

Each dealt with a different problem and each will be separately considered.

### ARTICLE 14

This Article provides:

"That no aid, charge, tax, burthen or fees ought to be rated, or levied, under any pretence, without the consent of the Legislature."

This is a restatement of the principle of the British Bill of Rights of 1689 and of the Declaration of the Stamp Act Congress of 1765 that free people ought not be taxed without their own consent or that of their elected representatives.

This right had not been won easily. Originally, it had been within the power of the sovereign to lay and collect taxes without the consent of Parliament or of the people and the transition from royal prerogative to legislative control had required centuries of struggle. Nowadays we take such rights for granted, but our forefathers in 1776

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<sup>4</sup> Other articles of importance in connection with taxes are Art. 8, providing for the separation of legislative, executive and judicial powers of government; Art. 23, protecting against deprivation of life, liberty or property without due process of law; and Art. 36, providing in part that no person ought to be compelled to maintain, or contribute to maintain any place of worship or any ministry. However, the primary significance of these provisions relates to matters other than taxes and they accordingly are omitted from consideration in this article.

were acutely conscious of the blood and courage that had been required to establish the rights of Englishmen in this respect.

The first British tax appears to have been imposed in 991 by King Ethelred the Unready to furnish funds to bribe away the Danish Vikings. It had the usual effect of appeasement and the Danes came back for more with such regularity that the Danish tribute became a regular annual imposition, known as the Danegeld. Magna Charta, in 1215, was precipitated by the excessive money demands of King John and provided, among other things, for freedom from "all evil tolls".<sup>5</sup> The issue of whether taxes could be levied without the consent of Parliament was brought to a head by the Petition of Right addressed to Charles I in 1628 and his refusal to recognize this principle led ultimately to his decapitation, thus giving edge to the point that there are some things worse than taxes. It was not until 1689, however, that the illegality of levying taxes without grant of Parliament was formally written into the law, in the Bill of Rights of that year.

The American Revolution was largely attributable to the refusal of the British Crown and Parliament to recognize the colonists' demand for equivalent rights, summed up in the principle of "no taxation without representation". The success of the Revolution established this principle in America but, like most such rules, it is more difficult to apply than to state. The major difficulties of application are to determine *first*, the nature of the power to tax, and *second*, the extent to which it may be delegated.

In general, taxation may be divided into two parts; (1) the elements that enter into the imposition of the tax, including the determination of the amount of money to be raised, the persons to pay it, and the general rules or standards under which it is to be imposed; and (2) the steps to be taken for its assessment and collection. The first

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<sup>5</sup> The term "evil tolls" referred to royal exactions other than the customary duties on wool, hides and leather. Magna Charta expressly recognized the right of the crown to continue to collect the "ancient and right customs", in which connection note the present use of the words "customs" and "duties" to denote taxes on exports and imports.

is a legislative function; the second is administrative. Under our theory of separation of powers and Art. 14 of the Declaration of Rights, the first and most fundamental of these functions can be exercised only by the legislative branch of the government. The executive branch can administer taxes imposed by the legislature but cannot itself create them.

Under modern conditions there is a tendency to consider the determination of revenue requirements as separate from the taxing power. It is clear historically, however, that the determination of the amount to be raised was the essence of the taxing power which was vested in the legislature by the British Bill of Rights and by its Maryland counterpart. The cause for which our ancestors fought was the right to say how much.<sup>6</sup>

As a corollary of the separation of powers, there is a well recognized general rule that the legislative power to tax cannot be delegated to non-legislative bodies.<sup>7</sup> The purpose of this rule, as applied to taxes, is to prevent the exercise of the taxing power by anyone other than the people or their elected representatives. For this reason, a delegation to a county or municipal corporation<sup>8</sup> or to the inhabitants of a given locality<sup>9</sup> satisfies the basic principle and is recognized as proper. In Maryland, however, the courts have gone beyond this and have permitted what is in essence a delegation of taxing power to an administrative body.

By Chapter 7 of the Acts of 1860 control of the police force of Baltimore City was taken away from the City and vested in a State-appointed Board of Police Commissioners. This Board was given the right to determine its own expenses and to requisition the City for such funds as were

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\* This element of the taxing power has at times been substantially circumvented by borrowing or by pledging the credit of the State, but abuses on this score during the internal improvement boom of the early 19th century led to the insertion in the Maryland Constitution of 1851 of the requirement (now Sec. 34 of Art. 3) that no debt shall be contracted by the General Assembly unless authorized by a law providing for the collection of an annual tax or taxes sufficient to pay the interest and principal within 15 years.

<sup>7</sup> See COOLEY, *LAW OF TAXATION* (4th Ed., 1924), Sec. 74.

<sup>8</sup> *Alexander v. M. & C. C. of Baltimore*, 5 Gill 383 (1847).

<sup>9</sup> *Burgess v. Pue*, 2 Gill 11 (1844).

required to meet them. In the event of the failure of the City to make funds available, the Board was given the right to sell certificates of indebtedness which could be used by the holders for the payment of City taxes. In *Baltimore v. State*,<sup>10</sup> this Act was upheld, including the provision permitting the Police Board to determine its own expenses and to require the City to pay them.<sup>11</sup>

Although it may be possible to rationalize this decision on grounds which do not transgress the literal language of Article 14, it seems clear that it violates the spirit of that provision and is an illustration of the aphorism that hard cases make bad law. The consent of the Legislature to which Article 14 refers was not intended to be a general consent empowering an administrative board to determine how much should be raised by taxes; it was intended to require the specific consent of the elected representatives of the people by whom the taxes were to be paid.

There has been an increasing trend toward the separation of the power to spend from the power to tax. It is most clearly visible in the Federal Government, but Maryland bears the same taint at all levels of government. As a somewhat extreme example, there are four small municipalities which live and spend without levying taxes of their own, being wholly supported by grants in aid from the state and federal governments.<sup>12</sup> Such situations may not necessarily result in financial irresponsibility, but they surely encourage it.

The separation of the spending power from the taxing power is not the specific evil that was envisioned by the framers of the Maryland Declaration of Rights, but it is a symptom of the malady which Art. 14 was intended to cure. When threads fray in the social fabric, the pattern tends to unravel in more than one direction.

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<sup>10</sup> 15 Md. 376 (1860).

<sup>11</sup> See also *McEvoy v. Mayor & C. C. of Baltimore*, 126 Md. 111, 94 A. 543 (1915) and *Welch v. Cogan*, 126 Md. 1, 94 A. 384 (1915).

<sup>12</sup> See letter of transmittal dated May 30, 1950, accompanying and printed as part of the Second Report of the State Fiscal Research Bureau on Local Government Finances in Maryland.

## ARTICLE 15

Judge Alfred S. Niles in his work on Maryland Constitutional Law,<sup>13</sup> states that "This Article is perhaps the most important in the whole Declaration of Rights. It has in substance been in all our constitutions." This characterization, however, referred primarily to the uniformity provision of Article 15, which at the time of publication of Judge Niles' book was in process of amendment pursuant to Chapter 390 of the Laws of 1914.

There are four general subdivisions under this Article as originally adopted and as subsequently amended: (1) the prohibition of poll taxes, (2) the exemption of paupers, (3) provisions with regard to the uniformity of taxes, and (4) the affirmative provision that taxes may be imposed with a political view.

Article 15 was originally written as a cohesive whole and said in effect that taxes for the support of the government should not be exacted on a per capita basis or from paupers but should be imposed on those owning property, in proportion to its value. In addition, it recognized the propriety of imposing taxes "with a political view for the good government and benefit of the community". Amendments have separated the clauses and destroyed the unity of the original language. As a result, it has become the practice to construe the different clauses as separable provisions and they will be so considered in this paper.

A. *Poll Taxes*

"That the levying of taxes by the poll is grievous and oppressive and ought to be prohibited;"

This provision has been in each of our constitutions and has been changed only once, in 1864, when the word "prohibited" was substituted for the word "abolished".<sup>14</sup>

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<sup>13</sup> (1915).

<sup>14</sup> This change was made to meet the objection of Mr. Henry Stockbridge of Baltimore City that "we cannot abolish a thing that does not exist". Debates of Const. Convention of 1864, Vol. I, p. 168.



By ordinary definition, any tax by the head is a poll tax.<sup>15</sup> But it is not that simple. It has been held, for example, that a law requiring all able-bodied males either to work on the roads or to pay for a substitute is not a poll tax.<sup>16</sup> And even after the adoption of the Declaration of Rights taxes were imposed on bachelors as such.<sup>17</sup> To understand these apparent contradictions, it is necessary to examine the evil at which the prohibition was aimed.

At one time the only direct taxes in Maryland were poll taxes. The view was expressed that they operated in accordance with ability to pay, inasmuch as wealthy persons owned slaves or had servants and would in effect be required to pay a larger tax than poorer persons.<sup>18</sup> The validity of this theory was open to question, but the antipathy towards poll taxes in Maryland seems to have been due primarily to their imposition for the support of the Church of England.

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<sup>15</sup> In his argument in *Appeal Tax Court v. Gill*, 50 Md. 377 (1879), at p. 393, Attorney General Gwinn stated that:

"Originally 'levying taxes by the poll', meant not only the taxing of persons by the head, but included also the taxing of horses, cattle and other domestic animals, which by several ancient Acts of Parliament were taxed *per capita*, without regard to their actual value; against which system of taxation as 'being grievous and oppressive', frequent remonstrances were made to the House of Commons."

Somewhat similar was the taxation of slaves by the head, which was the practice in colonial Maryland.

Poll taxes have never been popular; the English poll tax of 1380 was the immediate cause of the Peasants' Revolt of the following year, known as Wat the Tyler's Insurrection. See DOWELL, *HISTORY OF TAXATION AND TAXES IN ENGLAND* (2nd Ed., 1888), Vol. 3, p. 3. One of the rallying cries of this revolt was "Kill all the lawyers" and in London many of them were murdered by the mob.

<sup>16</sup> *Short v. State*, 80 Md. 392, 31 A. 322 (1895).

<sup>17</sup> See for example Ch. 35, sec. 57 of the Acts of Nov. 1779, imposing a tax of eleven pounds five shillings upon "all able bodied male inhabitants who have no families and are above the age of 21 years and under 50." Later statutes added teeth to the tax on bachelors by empowering the assessor to have defaulters committed "to the gaol of the county, there to remain till payment or security given therefor", as see Ch. 4, sec. 60 of the Acts of Nov. 1781.

A tax on lawyers was contested in *Egan v. Charles County Court*, 3 H. & McH. 169 (1793), but was upheld as a license tax. The theory of this case would not support the tax on bachelors unless being a bachelor is regarded as a privilege. As to this, deponent sayeth nought, discretion being the better part of valor.

<sup>18</sup> Governor Sharpe in a letter dated November 9, 1757, to Secretary Calvert characterized the poll tax as "the most equitable way of raising money in this colony. . . . As our entire estates consist for the most part in servants and negroes, those who have the most property pay the greatest share of the tax."

In 1692, after the accession of William and Mary, the Church of England was made the established church of Maryland and an annual poll tax of 40 pounds of tobacco was imposed for its support, in addition to special poll taxes for the construction of churches, etc. This had the effect of requiring Puritans, Roman Catholics, Quakers and others to pay for the support of religious beliefs or practices to which they were opposed. In addition, the ministers of the Church of England, whose positions were at the time regarded as sinecures, were not then held in universal esteem. In 1714 Governor Hart wrote to the Bishop of London that, while there were some worthy persons among the clergy of Maryland, "I am sorry to represent to your Lordship, on the contrary, that there are some whose education and morals are a scandal to their profession." Scharf, in his *History of Maryland*,<sup>19</sup> refers to them by such unflattering terms as drunkards and bigamists. He states that in 1734 "There were 36 parishes in the Province and the livings would average 200 £ per annum, the most valuable Church holdings upon the Continent and filled with the greatest proportion of profligate incumbents."

Under the circumstances, it is small wonder that the 40-pound per poll tobacco tax was regarded as "grievous and oppressive".<sup>20</sup> This explanation of the prohibition of poll taxes in the 1776 Declaration of Rights is supported by the fact that no comparable restriction was adopted by the neighboring colonies of Delaware, Pennsylvania and Virginia, where poll taxes do not appear to have been used for the support of the church.

In all three constitutional conventions since 1776, attempts have been made to eliminate the prohibition against poll taxes. In the 1851 convention, it was omitted from the draft proposed by the Committee on the Declaration of Rights but was restored by amendment from the floor, by

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<sup>19</sup> (1879), p. 31.

<sup>20</sup> Both Andrews and Scharf attribute the constitutional prohibition of poll taxes to their use for the support of the Church of England, as see: ANDREWS, *STORY OF MARYLAND* (1929), p. 268; SCHARF, *supra*, n. 19, Vol. 2, p. 33.

vote of 38 to 31.<sup>21</sup> In 1864, the poll tax provision was the subject of heated debate and was on two occasions voted out of the Declaration, but was ultimately reinstated by the vote of 43 to 37.<sup>22</sup> It was again debated in 1867 but on this occasion the amendment eliminating it was voted down 56 to 10.<sup>23</sup> A further attempt to permit poll taxes was made in the amendment of Article 15 proposed by Chapter 242 of the Laws of 1890 and the defeat of this amendment at the 1891 election has been attributed to its elimination of the prohibition against poll taxes.<sup>24</sup>

### B. *Exemption of Paupers*

"that paupers ought not to be assessed for the support of the government;"

There would seem little profit in taxing paupers, for which reason this provision in Article 15 may be thought to be academic. In the light of some of the revelations which have attended welfare activities, however, it may be of interest to consider who is a pauper.

Under the Provincial Government persons who received public alms were exempted from taxation and were deemed paupers.<sup>25</sup> The original draft of the Declaration of Rights made the term applicable to those "whose assets do not exceed 30 pounds currency value". This definition was

<sup>21</sup> Debates and Procs. of the Maryland Reform Convention (1851), Vol. I, p. 187.

<sup>22</sup> Debates of the Const. Convention of 1864, Vol. I; pp. 197, 201 and 218. Much of the discussion of the point was based on the assumption that poll taxes would or could be imposed as a qualification on the right to vote. Mr. Frederick Schley, of Frederick County, suggested that a "poll" tax "means a capitation tax levied upon the voters at the polls" (p. 173), and Mr. John Barron, of Baltimore City, made a stirring plea for the continuance of the prohibition against poll taxes on the ground that "there are but two places on earth where the rich and poor are on an equality, at the ballot box and at the grave" (p. 168).

<sup>23</sup> Perlman's Debates of Const. Convention of 1867, p. 132. On this occasion Judge Albert Ritchie expressed the following modern-sounding sentiment:

"The shadow of the tax collector darkens every door in this land now. Every species of property is now taxed and burdened to the extremest limit by Federal and State law. But even the Federal Government, in its merciless cupidity, has spared the right to vote."

<sup>24</sup> FREDERICK J. BROWN, *SHORT TALKS ON TAXES* (Baltimore, 1894), p. 14.

<sup>25</sup> See *Williams' Case*, 3 Bl. Ch. 186, 255 (1826-8). This is in accordance with the generally accepted meaning of the term, which is defined in *BOUVIER'S LAW DICTIONARY* as "One so poor that he must be supported at the public expense."

apparently too plush for our founding fathers who struck it out of the article in the course of the Convention, but the Legislature thereafter enacted that "all persons whose property shall not be valued above 10 pounds current money, shall be and are hereby declared paupers, and shall not be chargeable with any tax to the support of government".<sup>26</sup> This definition appears to have been superseded by general exemptions of small holdings of personal property and the statutes no longer put a monetary limit on pauperism.

A strict application of the constitutional exemption of paupers would raise interesting issues as to the sales tax and other like taxes which make no provision for such an exemption. Such a suggestion may appear trivial, but it should be borne in mind that the most common argument against sales taxes is their alleged impact on the poor. In fact, prominent tax reformers have affirmatively attributed pauperism to indirect taxes. This was one of the premises of Henry George's "Progress and Poverty", which became the bible of the Single Taxers, and even Professor Richard T. Ely (then of Johns Hopkins University, and active in local tax matters) stated in his "Taxation in American Cities and States",<sup>27</sup> that "there is a connection between indirect taxation and pauperism which is worthy of notice".

As a matter of literal construction it should be noted that the language of Art. 15 is that "paupers ought not to be assessed". In drafting the original Declaration of Rights the word "assessed" was used synonymously with the word "taxed", but the language nevertheless indicates that the framers of the article had in mind property taxes. This view gains strength from the fact that the immediately succeeding clause of the original article applied specifically to property taxes and that in the 1776 Declaration (also 1851 and 1864) these two portions of the article were separated only by a comma, rather than by a semi-colon as in the 1867 and 1915 versions.

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<sup>26</sup> Md. Laws, Nov. 1781, Ch. 4, Sec. 61.

<sup>27</sup> (1888).

### C. *Classification and Uniformity*

As originally adopted in 1776, this Article of the Declaration of Rights contained the following provision immediately following the exemption of paupers:

“... but every other person in the State ought to contribute his proportion of public taxes for the support of government according to his actual worth in real or personal property within this State;”

This provision has been attributed to Adam Smith's “Inquiry into the Nature and Causes of the Wealth of Nations”,<sup>28</sup> which states the following as the first maxim with regard to taxes:

“I. The subjects of every State ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.”

The Maryland Bill of Rights was drafted during August, 1776, and at least some of its framers were undoubtedly influenced by Adam Smith's monumental work, this portion of which had been published earlier in the same year. It will be noted that Adam Smith's maxim adopts the principle of contribution in proportion to revenue, whereas the test of the Maryland Declaration of Rights was the taxpayer's worth in property. To the extent that worth is dependent upon revenue, the two should produce the same result, but this would be true only in the case of income-producing property. It would seem, therefore, that the two statements are variations of the same fundamental principle of equality but differ in their application of that principle.<sup>29</sup>

<sup>28</sup> (1876) Pt. Two, Taxes, Vol. 4, p. 164. For references attributing this provision to Adam Smith, see Williams' Case, *supra*, n. 25, 253-4; Appeal Tax Court v. Patterson, 50 Md. 354, 367-8 (1879); and argument of counsel in Appeal Tax Court v. Gill, 50 Md. 377, 391 (1879).

<sup>29</sup> Actually, the two conceptions are not as far apart as our own use of such language might indicate. It was customary in England, to an extent not prevalent in this country, to express worth of property in terms of its annual income. Where an American would say a property is worth \$10,000, an Englishman of the 18th Century would have been more apt to speak of its value in pounds per annum.

This portion of Art. 15 has been amended twice, once by the Constitutional Convention of 1851 and a second time in 1915, pursuant to Ch. 390 of the Laws of 1914. An attempt to amend it in 1891, pursuant to Ch. 242 of the Laws of 1890, was defeated by the voters.

The Constitutional Convention of 1851 amended the pre-existing language in two respects, making it read as follows:

*"but every other persons in the State, or person holding property therein, ought to contribute his proportion of public taxes, for the support of government, according to his actual worth in real or personal property [within this State];"*<sup>30</sup>

The first of these changes was to insert the words "or person holding property therein" in order to require that non-residents owning property in the State contribute their proportionate share to the support of the government.<sup>31</sup>

The second was to omit the words "within this State" at the end, thus requiring in effect that a person's obligation to contribute to the support of the government be measured by *all* his property, and not merely by his property "within this State".<sup>32</sup>

At the time of these amendments, refinements as to the tax status of intangibles had not been developed and the Constitutional debates exhibit considerable confusion as to whether stock owned by a Maryland resident in an out-of-State corporation was or was not property within the State. Intangibles were, however, to play hob with the uniformity requirement of the Declaration of Rights and, as we shall

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<sup>30</sup> The language in italics being added and that in brackets being deleted.

<sup>31</sup> This addition was made in the draft submitted by the Convention's Committee on the Declaration of Rights, and was not debated on the floor of the Convention. The chairman of this Committee was Thomas Beale Dorsey, then Chief Judge of the Court of Appeals.

<sup>32</sup> This change also originated in the draft submitted by the Committee on the Declaration of Rights but touched off heated discussion in the Convention itself, an amendment being proposed by Alexander Randall of Anne Arundel County to revert to the language of the original article in this respect. The amendment was debated on the issue of whether the State should tax its citizens' investments outside the State, particularly in corporate stocks. See Debates and Proceedings of the Maryland Reform Convention, pp. 226-235.

see, contributed in 1915 to a much more drastic revision of this same provision.

In 1776, when the first constitution was adopted, wealth was almost entirely in the form of tangible property. This situation was substantially changed by the industrial revolution, which led to the creation of intangible property on a large scale. Intangibles were not, however, susceptible of the same tax treatment as tangibles. Assessment was difficult, avoidance easy, and in those cases where the tax laws could be applied against such property, rigorous enforcement had the effect of penalizing the honest and of driving capital out of the State.

Accordingly, the growth of intangible property put an increasing strain on the constitutional rule of uniformity. The language of the Bill of Rights required that taxes be apportioned in accordance with actual worth in real and personal property, including intangible property, and an avowed purpose of the 1851 amendment had been to extend this rule to intangibles representing investments outside the State. But in actual practice, it was not feasible to tax intangibles uniformly with other property.

This situation ultimately led to the classification amendment adopted by the voters in 1915 pursuant to Chapter 390 of the Laws of 1914, which took the form of striking out the requirement that property taxes be apportioned according to actual worth and of substituting in its place the following provision:

"that the General Assembly shall, by uniform rules, provide for separate assessment of land and classification and sub-classifications of improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general state government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or subclass of improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; . . ."

The background and development of this change were as follows:

(1) *Defects of the property tax.* By the 1880's changes in economic conditions had brought to light serious defects in the property tax as applied to intangible wealth and had led to the appointment in 1885 of a commission to study and revise the system of taxation in Baltimore City. This in turn led to the appointment of a similar commission in 1886 to recommend changes in the State law.<sup>33</sup>

Both commissions split on the issue of whether the general property tax could be made workable without an amendment eliminating or changing the constitutional rule that taxes be in proportion to worth in real and personal property. The lawyers on the commissions, whose approach was essentially practical, took the position that improvement was feasible without constitutional change and recommended the annual assessment of personal property on the basis of sworn returns. Professor Ely, on the other hand, viewed the issue academically and wrote a separate report in each case arguing that attempts to improve the system were futile without first eliminating the constitutional straight-jacket of uniformity.

The crux of this issue related to intangibles, as to which Dr. Ely stated (at pages 42 and 50 of the printed report of the Tax Commission of Baltimore):

"Many forms of personal property can be concealed beyond the reach of the tax assessor and tax gatherer, and they are precisely those forms which are of constantly increasing importance in the modern state. . . .

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<sup>33</sup> The Tax Commission of Baltimore was appointed pursuant to ordinance of May 9, 1885, and rendered its report to the Mayor and City Council under date of January 9, 1886. The Commission consisted of John P. Poe, Chairman, Summerfield Baldwin and Richard T. Ely (then a professor at Johns Hopkins University; and shortly thereafter the author of *TAXATION IN AMERICAN CITIES AND STATES*, published in 1888). Charles M. Armstrong acted as Secretary but was not a member of the Commission itself.

The Maryland Tax Commission was appointed pursuant to Ch. 488 of the Laws of 1886 and reported to the General Assembly of Maryland under date of January 20, 1888. The members of this commission were John P. Poe, Richard T. Ely, James Alfred Pearce (later a Judge of the Court of Appeals) and Charles M. Armstrong. James McSherry had originally been appointed to the commission but was elected chief judge of the sixth judicial district and did not thereafter participate in the proceedings of the commission. It will be noted that three of the four members of the State commission had served on or with the Baltimore City commission.



"Our present system of taxation corrupts the morals of the people. The spectacle of men of large means escaping taxation by a resort to devices easily at their command, causes dissatisfaction and bitterness on the part of the masses and leads others to justify themselves for this, their attempt to defraud the government."

(2) *Proposed 1890 amendment.* As an outgrowth of these views, Dr. Ely<sup>34</sup> prepared certain proposed amendments to Article 15, portions of which were enacted by Chapter 242 of the Laws of 1890 and submitted to the voters at the election of that year. The amendments proposed by this Act not only covered the classification of property for tax purposes, but also sought to eliminate the Constitutional prohibition against poll taxes, to authorize the taxation of incomes, and to give constitutional sanction to the exemption of property owned by religious, charitable and educational institutions. The amendment failed of adoption by a margin of about 6,000 votes, only 70,000 having voted on the issue out of 192,000 ballots cast in the election. A commentator of the time attributed its defeat to the proposed elimination of the prohibition against poll taxes.<sup>35</sup>

(3) *Wells v. Hyattsville.* Although most tax reformers of that day were in favor of separately classifying and taxing intangible property, there was also a strong movement in support of the tax reforms advocated by Mr. Henry George in "Progress and Poverty", which would have had the effect of exempting it entirely. Mr. George's program came to be known as the Single Tax movement, due to the proposed limitation of taxes to a single source, the unearned increment believed to be inherent in land values. Although generally frowned upon by orthodox economists and tax authorities, this movement had great appeal and developed an almost religious fervor in its adherents. In Maryland it was especially strong in the communities fringing the District of Columbia.

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<sup>34</sup> At p. 394 of his work on *TAXATION IN AMERICAN CITIES AND STATES*, Professor Ely states that he prepared these amendments at the request of certain prominent business men of Baltimore.

<sup>35</sup> See n. 24.

In 1892 the Single Taxers gained control of the Board of Commissioners of the Town of Hyattsville<sup>36</sup> and secured the passage of a local law<sup>37</sup> amending the provisions of the Town charter with respect to assessments. Superficially, this amendment seemed to require only that land and improvements in Hyattsville be separately assessed, but by the simple process of eliminating any reference to personal property from the assessment provisions it had the effect of exempting such property from taxation. In the general assessment made after the passage of this law, personal property was omitted altogether and, in addition, the Town Commissioners struck out the entire valuation on improvements, thus limiting taxes to the bare land. Opponents of the Single Tax, led by Mr. Charles Wells, thereupon brought action to compel the Town Commissioners to restore the valuation of improvements to the assessable basis and to assess all personal property. In the ensuing litigation<sup>38</sup> the Court of Appeals voided both the 1892 law and the action of the Town Commissioners, holding that the constitutional rule of uniformity required the taxation of personal property and improvements, as well as land. This decision had the effect of blocking the program of the Maryland Single Taxers unless the uniformity provision of Article 15 of the Declaration of Rights could be eliminated or amended.

(4) *Intangibles Tax of 1896.* The next move was made by those interested in the practical, rather than the theoretical, side of taxation and took the form of Chapter 143 of the Laws of 1896, providing for the taxation of income-producing securities at the limited local rate of 30¢ per \$100. Impetus for this came from the trust companies, which were exposed to discrimination and severe competitive disadvantages through the application of the full local tax rate to the securities which they held in a fiduciary capacity. By the nature of their business, the local trust companies were unable to employ the devices commonly used by in-

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<sup>36</sup> Jackson H. Ralston (later a trustee of the Fels Fund, established to promote the Single Tax), Charles H. Long and George S. Britt formed a majority of the Board. Mr. Ralston was its President.

<sup>37</sup> Md. Laws 1892, Ch. 285.

<sup>38</sup> Wells v. Hyattsville, 77 Md. 125, 26 A. 357 (1893).

dividuals to avoid the imposition of intangibles taxes. At the same time they were in direct competition for business with individuals and with out-of-state trust companies which were not subject to comparable disabilities.<sup>39</sup>

The limited intangibles tax (generally known as the 30 mil tax) became a substantial revenue producer in Baltimore City, as shown by the fact that the assessment of intangibles increased from \$6,000,000 in 1896 to \$150,000,000 in 1908.<sup>40</sup> Even its friends, however, recognized that the law was unconstitutional. For example, Judge Oscar Leser, who was for many years the dominant figure on the Appeals Tax Court of Baltimore City and later on the State Tax Commission of Maryland, stated that:

"Under the Constitution existing in 1896, classification was not permissible. . . . Not until 1914 was the Constitution of Maryland amended to permit the classification of property, and notwithstanding that, the law was absolutely enforced and never questioned because it was to the advantage of the public in the matter of revenue and to the advantage of the taxpayer in the rate he paid."<sup>41</sup>

(5) *The 1915 amendment.* The doubts (or worse) as to the constitutionality of the intangibles tax led tax administrators and others to seek an amendment to Article 15 to validate the tax, culminating in the following recommendation by the Tax Revision Commission of 1912:

"The language of the present section [Article 15 of the Bill of Rights] amounts to a tax against persons, not property, and should be amended, and should also be amended to remove any doubt as to the power of the Legislature to make reasonable classifications of property."<sup>42</sup>

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<sup>39</sup> See statement of Judge Oscar Leser to the National Tax Association that the Maryland intangible tax of 1896 "was inspired largely by the trustee corporations, which found it impossible to make truthful returns under the general property tax and survive." *Proceedings of the Nat. Tax Assn.* 1922, p. 305.

<sup>40</sup> See Prof. Charles J. Bullock, *Taxation of Intangible Property*, at p. 133 of the *Proceedings of the National Tax Association*, 1908.

<sup>41</sup> *Proceedings of National Tax Ass'n.*, 1922, p. 307.

<sup>42</sup> P. 35 of the report of the Commission for the Revision of the Taxation System of the State of Maryland and City of Baltimore, appointed pursuant to Md. Laws 1912, Ch. 779.

This recommendation was seized upon by the Single Taxers, who became the chief driving force for the revision of Article 15 and appear to have been responsible for the actual draftsmanship of the amendment.<sup>43</sup> They desired it, however, for quite different reasons from those of the 1912 Commission, and were opposed to the taxation of intangibles at all. The amendment passed the Legislature as Chapter 390 of the Laws of 1914 and was adopted at the election of 1915 by a vote of 49,918 to 26,722, out of a total of 240,723 participating in the election.

The most significant changes effected by the 1915 amendment may be summarized as follows:<sup>44</sup>

(a) It shifted the emphasis from persons to property. Formerly uniformity related to the worth of the taxpayer, the requirement being that each *person* be taxed in accordance with his worth in property. Now the requirement of uniformity applies to the tax on the property itself.

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<sup>43</sup> In the publisher's note to *CONFRONTING THE LAND QUESTION* (1945) by JACKSON H. RALSTON, credit for the amendment is given to Mr. Ralston, who was the recognized leader of the Single Taxers in Maryland and who had been president of the Board of Commissioners of Hyattsville at the time of the abortive 1892 attempt to establish the Single Tax there. *Supra*, ns. 36-38. Judge Oscar Leser, whose interest in and knowledge of tax matters of that period is proverbial, also attributes the 1915 amendment to Mr. Ralston and the Single Taxers.

By this time it had become the policy of the Single Taxers to move behind the reforms of others, to the extent that they suited their purposes, rather than to press the Single Tax program as such. For example, they were active in Maryland and elsewhere in behalf of the initiative and referendum and in support of local home rule, which they regarded as steps toward the achievement of their ends. It is noteworthy that the Home Rule and Referendum amendments to the Constitution were enacted at the same legislative session (Chapters 416 and 673, respectively, of the Laws of 1914) and adopted by the voters at the same election, as the amendment of Article 15 of the Declaration of Rights. Jackson H. Ralston was prominent in all three reforms and is said to have prepared the initial draft of the Home Rule amendment, as to which see also the publisher's note to *CONFRONTING THE LAND QUESTION*. For an interesting history of the Single Tax in this country, see ARTHUR N. YOUNG, *THE SINGLE TAX MOVEMENT IN THE U. S.* (Princeton Univ. Press, 1916); this does not, however, cover the situation in Maryland.

<sup>44</sup> A revealing change, in addition to those enumerated, was the shift from the directory to the mandatory method of expression — from the use of the word "ought" to the word "shall". Prior to the 1915 amendment Article 15 of the Declaration of Rights was expressed entirely in directory terms, as befitted a statement of principles, and it had been argued that it should be read in this light and not as a statement of mandatory rules, as see the dissenting opinion of Stewart, J., in *State v. Cumberland & Penn. R.R. Co.*, 40 Md. 22, 63 (1874). But the courts have treated Article 15 as laying down positive rules of law and the language of the 1915 amendment is in line with this interpretation.

(b) Under the amendment, the Legislature is required to provide for the separate assessment of land and improvements; formerly there was nothing in the Constitution to prevent the assessment of land and improvements as a unit.

(c) Classification is authorized as to improvements and personal property, although not as to land.

(d) Taxes must be uniform as to land within each taxing district, and as to personal property and improvements within each classification, but there is no longer any constitutional requirement of overall uniformity of tax burden.

(e) The amendment authorizes the exemption of classes of improvements and personal property and is broad enough to permit the exemption of *all* improvements and personal property. No exemption is, however, authorized as to land.

It will be noted that these changes removed the constitutional obstacles to the Single Tax program, the primary design of which was to exempt all personal property and improvements from taxation.<sup>45</sup> The changes also met the objectives of those favoring a classified property tax, including validation of the intangibles tax.

Except as it permitted classification, including exemption of improvements and classes of personal property, the 1915 amendment was not intended and should not be taken to have altered the fundamental principle of equality expressed in the original Declaration of Rights. This has been expressly recognized by the Court of Appeals in *Susquehanna Power Co. v. State Tax Commission*,<sup>46</sup> where it was stated that:

“Although the phrase of the Maryland Bill of Rights, stating the just and salutary principle that ‘every person in the State, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real or personal property’, was omitted from

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<sup>45</sup> Although the Single Taxers were successful in their constitutional program in Maryland in 1914 and 1915, their strength was on the wane. The Single Tax was for a time in effect in Capitol Heights, Maryland, but the Single Taxers were never able to achieve the adoption of their theories by the State or county governments in Maryland and their program was ultimately blocked by enforcement of the requirement that local property taxes be based upon county assessments.

<sup>46</sup> 159 Md. 334, 343, 151 A. 2d 29 (1930).

the article as amended by chapter 390 of the Acts of 1914, ratified November 2nd, 1915, yet it is implicit in the . . . language of the article as amended: . . ."

Furthermore, the principle of equality was written into the statutory law by Chapter 841 of the Laws of 1914, enacted at the same session of the General Assembly as the proposal to amend Article 15. This Act created the State Tax Commission and, among other things, made it the duty of the Commission to see that:

"all taxable property shall be placed upon the assessment books and equalized between persons, firms and corporations in all the Counties, Districts, Cities, Towns and Villages of the State, so that all persons, firms and corporations shall be assessed alike for like kinds of property."

This expression of legislative policy has been continued in the law without change of substance.<sup>47</sup>

#### *Tendency to Restrict Principle of Uniformity*

Although the Declaration of Rights originated as a statement of principles, the tax articles have been treated as positive rules of law and have been given a restrictive interpretation. This has been particularly marked with respect to the principle of uniformity as set out in Article 15. Two recent examples should suffice to illustrate this.

(1) *Applicability of Art. 15 to assessments.* In the case of *Rogan v. Calvert County*,<sup>48</sup> the Court of Appeals stated:

"This Court has held that the provision in the amendment to Article 15 of the Declaration of Rights, made by Chapter 390 of the Laws of 1914, ratified in November, 1915, declaring that all taxes to be levied by the State for the support of the State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, refers to levies of taxes and not to assessments. *Leser v. Lowenstein*, 129 Md. 244, 250, 98 A. 712."

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<sup>47</sup> Md. Code (1951), Art. 81, Sec. 230 (4).

<sup>48</sup> 71 A. 2d 47, 51 (Md., 1950).

This case involved assessment procedures, rather than the validity of any particular assessment, as was also true of *Leser v. Lowenstein*,<sup>49</sup> which it cites. However, the language of the court is couched in general terms and seems to stand for the proposition that the uniformity requirement of Art. 15 is limited to tax rates and is not applicable to assessments. This is the construction placed on this language in a recent ruling of the Attorney General<sup>50</sup> upholding the validity of Laws of 1951, Ch. 321, which requires the assessment of stock in trade at 75% of its value for county taxation in Anne Arundel and Frederick Counties and for municipal taxation in the City of Frederick, notwithstanding the fact that similar items of property not constituting stock in trade are required to be assessed at their full value. This ruling was made with obvious reluctance under what was felt to be the compulsion of the Court's statement in *Rogan v. Calvert County*.<sup>51</sup>

To make sure that the full implication of this ruling would not be overlooked by the unwary, the Attorney General pointed out with admirable candor that under the statute in question:

"precisely the same type of personal property would be assessed at different percentages of its value depending on whether or not it was held by its owner as 'stock in business' or otherwise."<sup>52</sup>

The deliberate assessment of some property at 75% of its actual value, while at the same time assessing at full value other identical property in the same political subdivision or taxing district, is so diametrically opposed to the principle of equality as originally enunciated in the Declaration of Rights that further examination is in order to determine how such a result could have been brought about. If we have in fact gotten so completely turned around, how did we manage to do it?

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<sup>49</sup> 129 Md. 244, 98 A. 712 (1916).

<sup>50</sup> Opinion dated Aug. 21, 1952, to Albert W. Ward, Secretary, State Tax Commission; *The Daily Record*, Sept. 15, 1952.

<sup>51</sup> *Supra*, n. 48.

<sup>52</sup> *Supra*, n. 50.

Under Article 15 of the Declaration of Rights as originally adopted, taxes were required to be apportioned in accordance with the actual worth of the taxpayer in real or personal property. This necessarily meant uniformity of assessment as well as uniformity of tax rate and was so construed by the courts.<sup>53</sup> The Attorney General agreed with this but, in order to give effect to the language of the Court of Appeals in the *Calvert County* case, he concluded that the 1915 amendment must have changed the rule. This conclusion raises two questions: (1) what was the purpose and effect of the 1915 amendment, and (2) what did the court really mean in its statements in *Leser v. Lowenstein* and *Rogan v. Calvert County*?

With respect to the 1915 amendment effected pursuant to Laws of 1914, Ch. 390, a number of things are clear:

*First*, there is nothing in the express language of the amendment to require such a restricted construction. This portion of Art. 15 had always used the word "taxes" and the term had always been held to mean taxes in the realistic sense of dollar result, not in the limited sense of tax rates. As pointed out by the Attorney General, property taxes are the result of applying the rate to the assessed value, for which reason uniformity can be destroyed just as effectually by discrimination in assessment as by variation in tax rate. Art. 15 as amended continues to use the same word "taxes".

*Second*, there is nothing in the background of the 1915 amendment to indicate that the word "taxes" was used in a different sense than theretofore, or to indicate any intention to depart from the basic principle of uniformity. The concept of uniformity was refined, so as to permit classification, but it was not abandoned. In fact, all known indications point to the contrary. For example, the 1912 commission that recommended the amendment of Art. 15 was intimately concerned with uniformity of assessments. Some 164 pages of its report were devoted to the discussion of assessments and assessment procedures and it was pri-

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<sup>53</sup> See especially, *State v. Cumberland & Penn. R.R. Co.*, 40 Md. 22 (1874), and *Schley v. Montgomery County*, 106 Md. 407, 67 A. 250 (1907).



marily for the purpose of achieving uniformity of assessments that it recommended the establishment of a State Tax Commission. As stated by the Court of Appeals in *Leser v. Lowenstein*.<sup>54</sup>

"The main object of the creation of the Commission was to secure the equalization of assessments, . . ."

*Third*, should there have been any doubt on the subject, it would have been laid to rest by *Susquehanna Power Co. v. State Tax Commission*,<sup>55</sup> in which the Court of Appeals expressly recognized that the 1915 amendment of Art. 15 was not intended to impair the general principle of equality of assessments.

What then is the explanation of the Court's statement in *Rogan v. Calvert County*,<sup>56</sup> as quoted above? Did the Court mean what the Attorney General reluctantly thought? If not, what did it mean? It is believed that the explanation is to be found in *Leser v. Lowenstein* which was cited as the basis for the statement.

*Leser v. Lowenstein*, was a suit to enjoin the reassessment of property in Frederick County pursuant to an order of the State Tax Commission. Both the statute under which the State Tax Commission issued its order (Md. Laws 1914, Ch. 841) and the earlier statutes setting up assessment standards, antedated the adoption by the voters of the amendment of Art. 15 of the Declaration of Rights. This amendment provided, among other things:

"that the General Assembly shall, by uniform rules, provide for separate assessment of land and classification and sub-classifications of improvements on land and personal property, as it may deem proper;"

It was argued that this provision repealed the prior laws governing the assessment of property and that, since the State Tax Commission could not itself adopt assessment standards (this being a legislative function), it was powerless to direct a reassessment without additional legislation. This posed the question of whether the portion of Art. 15

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<sup>54</sup> *Supra*, n. 49, 260.

<sup>55</sup> *Supra*, n. 46.

<sup>56</sup> *Supra*, n. 48.

quoted above was "self-executing", as argued. If it was, it operated to repeal the existing assessment laws; but if it was not, such laws would continue in effect until repealed by the legislature.

The Court held that the provision was not "self-executing" and accordingly that the State Tax Commission could proceed under the existing statutes. In the course of reaching this conclusion the Court contrasted it with other parts of the amendment which clearly were "self-executing", including the provision that:

" . . . all taxes thereafter provided to be levied . . . shall be uniform as to land" etc.

Then, by way of precaution, the Court added that this language could not possibly be held to repeal the existing assessment laws, since, as the Court said, "This provision refers not to assessments but to future levies of taxes".

In context, the statement of the Court in *Leser v. Lowenstein* is clear and is not at all inconsistent with the principle of uniformity as previously established. The Court did not say or mean that the requirement of uniformity should thereafter be limited to tax rates and should not apply to assessments. It is only when the statement is lifted out of context that it can be given this meaning.

This last is, of course, what has happened. The statement was quoted out of context and as a result seems to have a meaning that the Court making it never intended. This is doubly unfortunate since the practical effect of the statement, when isolated and read literally, is to consign the uniformity requirement of Art. 15 to the junk heap.<sup>57</sup>

(2) *Curtailment of the remedy as to unequal assessments.* Under the Maryland law a taxpayer has legal stand-

<sup>57</sup> To avoid possible confusion, it should be pointed out that Art. 15, as amended, does not demand uniformity (a) as between different taxing districts or (b) as between different classes of improvements and personal property in the same taxing district. This is the explanation of the valuation and assessment recommendation of the Tax Survey Commission of 1949, to which the Attorney General refers in his opinion of Aug. 21, 1952, *supra*, n. 50. This is, however, far different from authorizing differences in valuation or assessment solely on the basis of ownership or use. To permit the deliberate assessment of the property of one person at 75% its actual value, while deliberately assessing identical property in the hands of another person in the same taxing district at 100% is to give the coup de grace to whatever remains of the principle of uniformity.

ing to protest and appeal the assessments of others on the ground that they are too low.<sup>58</sup> In *State Tax Commission v. C. & P. Telephone Co.*,<sup>59</sup> involving an assessment which a public utility company alleged to be discriminatory, the Court applied the converse of this rule, stating:

"If other utilities have been underassessed, appellee's remedy lies not in attempting to be relieved of the assessment itself but in restraining the Commission from not properly assessing other utilities."

The fact that a taxpayer may have the right to object to the underassessment of the property of others should not mean that this is his only remedy. As a practical matter such a limitation would largely destroy the remedy. A taxpayer has a direct financial interest in getting his own assessment reduced, but he has no comparable incentive in getting the assessments of others increased. The community as a whole may benefit from the increase, but the monetary interest of the individual taxpayer is ordinarily too small and too remote to justify the expenditure of his time and money. Accordingly, the rule in question will eliminate the most effective check on discriminatory assessments, namely, the financial incentive of taxpayers who are adversely affected.

Even if a taxpayer were willing to incur the expense and the hostility involved in attempting to increase the assessments of his neighbors or competitors, he might find it impracticable to do so. Ordinarily, he will have no knowledge of the discrimination until notified of his own assessment and given an opportunity to investigate the assessments of his neighbors or competitors. By the time he can do this the time for appealing the other assessments may have expired.<sup>60</sup>

<sup>58</sup> *Schley v. Lee*, 106 Md. 390, 67 A. 252 (1907); *Anne Arundel County v. Buch*, 190 Md. 394, 58 A. 2d 672, 5 A. L. R. 2d 569 (1948).

<sup>59</sup> 193 Md. 222, 235, 66 A. 2d 477 (1949).

<sup>60</sup> Although a taxpayer must be given notice of his own assessment, he ordinarily receives no notice of the assessments of others and may experience difficulty in ascertaining them. In addition, the individual assessments are usually staggered, so as to spread the work, and become final at different times. For these and other reasons the difficulties involved in asserting the proposed remedy will often be insuperable. In fact, in the very case in which the remedy was suggested it could not have been availed of, due to

The adequacy of such a remedy was before the U. S. Supreme Court in a case under the equal protection clause of the Fourteenth Amendment, *Sioux City Bridge Co. v. Dakota County*,<sup>61</sup> and was disposed of as follows in the opinion of the Court:

"The Supreme Court [of Nebraska] . . . holds that the Bridge Company has no remedy except 'to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced.' . . . Such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of under-assessed property in the taxing district."

The same rule was more recently applied in *Hillsborough v. Cromwell*,<sup>62</sup> in which the New Jersey courts had similarly refused to remedy a discrimination. In that case, the Supreme Court stated:

"The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. The constitutional requirement, however, is not satisfied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class."

It is difficult to understand why the principle of equality in Art. 15 should be given a more restrictive interpretation than the corresponding principle in the Fourteenth Amendment.

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time limits and other factors. Accordingly, it seems clear that the Court's statement in *State Tax Commission v. C. & P. Telephone Co.*, *ibid.*, was merely made in passing, rather than after full consideration.

<sup>61</sup> 260 U. S. 441, 445-6 (1923).

<sup>62</sup> 326 U. S. 620, 623 (1946).

### D. *Taxes Laid with a Political View*

"... yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community."

This portion of Article 15 has been included in all our Constitutions without substantial change of language<sup>63</sup> and has been cited in a multitude of cases. The first question that must be answered, however, is why it should be there at all.

Except as limited by the State and Federal Constitutions (including the Declaration of Rights) the State has full and unrestricted power to tax. Its power in this respect is inherent in the nature of sovereignty and no constitutional grant is necessary to create it.<sup>64</sup> Accordingly, if viewed as a grant of power, this portion of Article 15 is redundant and did not create any authority not already in existence.

On the other hand, it is equally clear that this clause could not have been intended as a qualification on the other clauses of Article 15. It could not have been intended that taxes could be imposed without restriction provided that they were laid with a political view. Such a construction would render the rest of the Article a substantial nullity.<sup>65</sup>

However, this takes a more legalistic view of the provision than is justified by its background. The framers of the Declaration of Rights did not approach their task so technically. They were experts in human nature rather

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<sup>63</sup> Aside from changes in punctuation, the only change was the insertion by the 1851 Constitutional Convention of the words "on persons or property" following the word "laid", and their deletion by the Constitutional Convention of 1864. The record of the 1851 debates and proceedings does not disclose the reason for the addition of these words. The entire clause was discussed on several occasions at the 1864 convention and one gathers the impression that its members thought that the original clause was harmlessly superfluous but that the 1851 addition created a possible inconsistency with the preceding clauses of Article 15 and should accordingly be eliminated.

At the 1867 convention the Committee on the Declaration of Rights proposed to strike out the words "and justly", but the convention was sufficiently old-fashioned to feel that taxes should be "just" as well as proper, and refused to accept the amendment.

<sup>64</sup> *Kenneweg v. Allegany County*, 102 Md. 119, 62 A. 249 (1905); *Oursler v. Tawes*, 178 Md. 471, 13 A. 2d 763 (1940).

<sup>65</sup> As stated by Chancellor Bland in *Williams Case*, 3 Bl. Ch. 186, 257 (1828-31), "No exception can be allowed to have the same extent as the rule itself."

than in tax law, and they were stating principles rather than rigid rules. It was natural that they should give express recognition to the broad power of the State to impose taxes and it seems reasonable to assume that the "political view" clause was included to make it clear to the public that, except as expressly restricted, the new-born State would have full taxing power.

Although the courts have expressly recognized the inherent nature of the State's power to tax, it is interesting to note that the "political view" clause has been referred to as the constitutional basis of taxes other than those on property;<sup>66</sup> for example: license taxes, inheritance taxes and income taxes. This does no harm, other perhaps than to mislead the unwary into the assumption that in the State government, as in the Federal government, an express constitutional basis must be found for all tax exactions. Actually, of course, this is a vital point of difference between the State and Federal governments.

The "political view" clause has been all things to all men. Among other things, it has been held to justify property taxes which were not regarded as being for the support of the government but were nevertheless for the good of the community. For example, *Waters v. State*,<sup>67</sup> involved a tax to finance the colonization of free negroes in Africa. The court did not consider this to be a measure for the support of the government but it nevertheless held it valid under the political view clause as being for the good government and benefit of the community. Under the broadening standards of governmental responsibility, the importance of such a distinction may have diminished, but it is an interesting precedent.

### CONCLUSION

In closing it should again be emphasized that the Declaration of Rights was a statement of principles. Accordingly, they should be construed broadly, with a view to giving effect to their objectives. This was done in the earlier cases

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<sup>66</sup> See especially, *Oursler v. Tawes*, *supra*, n. 64, 486.

<sup>67</sup> 1 Gill 302 (1843).

but the more recent tendency has been in the opposite direction. Taxes are by their nature technical. They promote a battle of wits between tax collectors and taxpayers and inevitably lead to hair-splitting. These factors are inherent in the best of tax systems and they have been greatly accentuated by the growing cost of government and the increasing complexity of our economic life.

When hairs are to be split, the courts have no alternative but to split them and it is not unnatural that the tax articles of the Declaration of Rights, which started out as principles, have come to be construed as technical rules of law. Nor may it be unnatural that in this whittling process some of the objectives of the Declaration of Rights have been lost to view. But no student of the cases can fail to be impressed by the extent to which the principles expounded in the tax articles have been eroded away. Throughout history, children have been prone to stray from the ways of their fathers and we in Maryland, notwithstanding that we admit superiority in most things, have been no exception.